

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SOREN C. SORENSEN and JENS O. SORENSEN

Appeal No. 98-1028
Application 08/378,809¹

ON BRIEF

Before STAAB, McQUADE and CRAWFORD, Administrative Patent Judges.

STAAB, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 2-8, all the claims currently pending in the application.

¹ Application for patent filed January 27, 1995.

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Appellants' invention pertains to a tie useful for forming a loop for retaining a bundle of elongated articles.

Independent

claim 2, a copy of which appears in the appendix to appellants' brief, is illustrative of the appealed subject matter.

The references of record cited by the examiner as evidence of obviousness are:

Caveney	3,537,146	Nov. 3, 1970
McCormick	3,924,299	Dec. 9,
1975		

Claims 2-8 stand rejected under 35 U. S. C. § 103 as being unpatentable over McCormick in view of Caveney.²

The rejection is explained in the examiner's answer

²Although the examiner relies on US Patent 4,473,524 to Paradis which is of record in the instant application to support his position on appeal (see page 4 of the answer), he has not included this reference in the statement of the rejection. Where a reference is relied on to support a rejection, whether or not in a minor capacity, there is no excuse for not positively including the reference in the statement of the rejection. See Manual of Patent Examining Procedure (M.P.E.P.) 706.02(j); *In re Hoch*, 428 F.2d 1341, 1342 n.3, 166 USPQ 406, 407 n.3 (CCPA 1970) and *Ex parte Raske*, 28 USPQ2d 1304, 1305 (BPAI 1993). Accordingly, we have not considered the teachings of the Paradis patent in reviewing the merits of the appealed rejection.

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(Paper No. 11, mailed December 12, 1996), and the supplemental examiner's answer (Paper No. 13, mailed April 24, 1997).

The opposing viewpoints of appellants are set forth in the brief (Paper No. 10, filed October 23, 1996), the reply brief (Paper No. 12, filed February 10, 1997), and the supplemental reply brief (Paper No. 14, filed June 6, 1997).

Independent claim 2 calls for a tie comprising an elongated tongue having a first set of ratchet teeth on one broad side of the tongue and a second set of ratchet teeth on an opposite broad side of the tongue. The tie is further described as including a locking head at one end of the tongue having an opening for receiving the tongue. Claim 2 sets forth that one side of the locking head opening has a movable pawl including at least one pawl tooth for engaging the first set of ratchet teeth and that an opposing side of the locking head opening has an abutment surface including at least one tooth for engaging the second set of ratchet teeth when the tongue is inserted into the opening. Independent claims 5-7 contain similar limitations.

In rejecting the appealed claims as being unpatentable

over McCormick in view of Caveney, the examiner has found that the tie of McCormick meets all of the above noted limitations of the independent claims. In particular, the examiner has found on page 3 of the answer that the transverse grooves 72 of the Figure 6 embodiment of McCormick correspond to the second set of ratchet teeth. Appellants contend on page 6 of the brief that the transverse grooves 72 are not configured to function as ratchet teeth and therefore do not meet this claim limitation.

Terms in a claim should be interpreted in a manner consistent with the specification and construed as those skilled in the art would construe them. *In re Bond*, 910 F.2d 831, 833, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990); *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). Unlike the examiner, we do not see that the transverse grooves 72 of McCormick provide a second set of "ratchet teeth," as called for in all of the independent claims, as that term would be understood by one of ordinary skill in the art. The term

"ratchet" is defined as "1. A mechanism consisting of a pawl that engages the sloping teeth of a bar or wheel, permitting motion in one direction only. 2. The pawl, bar, or wheel of a ratchet."³ Based on this definition, and consistent with appellants' specification, we believe one of ordinary skill in the art would consider the term "ratchet teeth" as used in the appealed claims to mean that the second set of ratchet teeth are shaped to cooperate with the at least one tooth disposed on the abutment surface to permit motion in one direction only when engaged. The examiner has not explained, and it is not apparent to us, how the transverse grooves 72 of McCormick would function in this manner. Accordingly, appellants' contention that McCormick's transverse grooves do not meet this claim limitation is well taken.

We have also reviewed the Caveney reference additionally cited by the examiner against the claims for its teaching of ratchet teeth that extend to the lateral edges of the tongue, but find nothing therein to make up for the deficiency of McCormick

³*Webster's II New Riverside University Dictionary*
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noted above. It follows that we cannot sustain the standing rejection of the appealed claims as being unpatentable over the combined teachings of McCormick and Caveney.

The decision of the examiner is reversed.

REVERSED

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LAWRENCE J. STAAB)	
Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
JOHN P. McQUADE)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
MURRIEL E. CRAWFORD)	
Administrative Patent Judge)	

LJS/pgg

Edward W. Callan
3033 Science Park Road
San Diego, CA 92121

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